

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROSS FRANCESKI,

Plaintiff(s),

09cv0174

**ELECTRONICALLY FILED**

v.

UNIVERSITY OF PITTSBURGH  
MEDICAL CENTER,

Defendant(s).

**FINAL JURY INSTRUCTIONS**

**I. GENERAL INSTRUCTIONS.**

NOW THAT YOU HAVE HEARD THE EVIDENCE AND THE  
ARGUMENT, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW.

INITIALLY, WE HAVE GIVEN YOU COPIES OF THE SPECIAL  
VERDICT FORM ON WHICH YOU WILL ANSWER SPECIFIC  
QUESTIONS. PLEASE TAKE A FEW MINUTES TO READ THE FORM,  
AS THE INSTRUCTIONS I AM ABOUT TO GIVE YOU WILL HELP YOU  
ANSWER THOSE QUESTIONS.

AS JUDGES OF THE FACTS, IT IS YOUR DUTY TO DETERMINE  
FROM THE EVIDENCE WHAT ACTUALLY HAPPENED IN THIS CASE,  
APPLYING THE LAW AS I NOW EXPLAIN IT. YOU MUST CONSIDER

MY INSTRUCTIONS AS A WHOLE; DO NOT DISREGARD OR GIVE SPECIAL ATTENTION TO ANY ONE INSTRUCTION; AND DO NOT QUESTION THE WISDOM OF ANY RULE OF LAW OR RULE OF EVIDENCE I STATE. IN OTHER WORDS, DO NOT SUBSTITUTE YOUR OWN NOTION OR OPINION AS TO WHAT THE LAW IS OR OUGHT TO BE.

IF I HAVE REFERRED TO THE FACTS OR THE PARTIES' CONTENTIONS, IT WAS ONLY TO PLACE THE EVIDENCE AND ARGUMENTS IN PERSPECTIVE. IF I ASKED ANY QUESTIONS OF ANY WITNESSES OR OF THE ATTORNEYS, IT WAS TO CLARIFY MATTERS I FELT SHOULD HAVE BEEN CLARIFIED, AND NOT IN ANY WAY TO INDICATE THE COURT'S OPINION ABOUT THE FACTS OR THE TESTIMONY OF THE WITNESS. MY OPINION ABOUT THE FACTS AND THE PARTIES' CONTENTIONS IS NOT IMPORTANT BECAUSE YOU, AND YOU ALONE, ARE THE SOLE FINDERS OF THE FACTS.

## II. EVIDENCE.

### WHAT IS EVIDENCE

I HAVE MENTIONED THE WORD "EVIDENCE." THE "EVIDENCE" IN THIS CASE CONSISTS OF THE TESTIMONY OF WITNESSES, THE DOCUMENTS AND OTHER PHYSICAL ITEMS, IF ANY, RECEIVED AS EXHIBITS, AND ANY FACTS STIPULATED BY THE PARTIES.

### EXHIBITS

COUNSEL FOR THE PLAINTIFF AND THE DEFENDANT HAVE AGREED TO THE LEGAL ADMISSIBILITY OF VARIOUS EXHIBITS. THIS MEANS THAT THESE EXHIBITS MEET THE REQUIREMENTS OF THE RULES OF EVIDENCE AND THEREFORE HAVE BEEN ADMITTED FOR YOUR CONSIDERATION. THIS DOES NOT MEAN THAT THE PARTIES AGREE AS TO THE INFERENCES OR CONCLUSIONS THAT YOU SHOULD OR MAY DRAW FROM ANY EXHIBIT.

STIPULATIONS OF FACT ARE FILED

THE PARTIES HAVE AGREED, OR STIPULATED, TO CERTAIN FACTS AS BEING TRUE AND THOSE STIPULATIONS HAVE BEEN PLACED ON THE RECORD IN THIS TRIAL. YOU MUST TREAT ANY STIPULATIONS OF FACT AS HAVING BEEN PROVED FOR THE PURPOSES OF THIS CASE.

WHAT IS NOT EVIDENCE

THE FOLLOWING THINGS ARE NOT EVIDENCE:

1. STATEMENTS, ARGUMENTS, QUESTIONS AND COMMENTS BY THE LAWYERS ARE NOT EVIDENCE.

2. LIKEWISE, OBJECTIONS ARE NOT EVIDENCE. LAWYERS HAVE EVERY RIGHT TO OBJECT WHEN THEY BELIEVE SOMETHING IS IMPROPER. YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION. IF I SUSTAINED AN OBJECTION TO A QUESTION, YOU MUST IGNORE THE QUESTION AND MUST NOT TRY TO GUESS WHAT THE ANSWER MIGHT HAVE BEEN.

3. ANY TESTIMONY THAT I ORDERED STRICKEN FROM THE RECORD, OR TOLD YOU TO DISREGARD, IS NOT EVIDENCE AND

YOU MUST NOT CONSIDER ANY SUCH MATTER.

4. ANYTHING YOU SAW OR HEARD ABOUT THIS CASE OUTSIDE THE COURTROOM IS NOT EVIDENCE. YOU MUST DECIDE THE CASE ONLY ON THE EVIDENCE PRESENTED HERE IN THE COURTROOM. DO NOT LET RUMORS, SUSPICIONS, OR ANYTHING ELSE THAT YOU MAY SEE OR HEAR OUTSIDE OF COURT INFLUENCE YOUR DECISION IN ANY WAY.

EVIDENCE, INFERENCES AND COMMON SENSE

WHILE YOU MAY CONSIDER ONLY THE EVIDENCE IN THE CASE IN ARRIVING AT YOUR VERDICT, YOU ARE PERMITTED TO DRAW SUCH REASONABLE INFERENCES FROM THE TESTIMONY AND EXHIBITS YOU FEEL ARE JUSTIFIED IN THE LIGHT OF YOUR COMMON EXPERIENCE, REASON AND COMMON SENSE.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

IN THIS REGARD, YOU MAY CONSIDER EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. "DIRECT EVIDENCE" IS THE TESTIMONY OF SOMEONE WHO ASSERTS ACTUAL KNOWLEDGE OF

A FACT, SUCH AS AN EYEWITNESS. "CIRCUMSTANTIAL EVIDENCE" IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES FROM WHICH YOU MAY INFER THAT SOMETHING EITHER DID OR DID NOT HAPPEN. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT REQUIRES ONLY THAT YOU WEIGH ALL OF THE EVIDENCE AND BE CONVINCED THAT THE PARTY HAS MET THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE BEFORE YOU RETURN A VERDICT FOR THAT PARTY.

BIAS, SYMPATHY AND PREJUDICE

YOU MAY NOT ALLOW SYMPATHY OR PERSONAL FEELINGS TO INFLUENCE YOUR DETERMINATION. YOUR DUTY IS TO DECIDE THE CASE SOLELY ON THE BASIS OF THE EVIDENCE OR LACK OF EVIDENCE AND THE LAW AS I HAVE INSTRUCTED YOU, WITHOUT BIAS, PREJUDICE OR SYMPATHY FOR OR AGAINST THE PARTIES OR THEIR COUNSEL. BOTH THE PARTIES AND THE PUBLIC EXPECT THAT YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE EVIDENCE IN THE CASE, FOLLOW THE LAW AS STATED BY THE

COURT, AND REACH A JUST VERDICT REGARDLESS OF THE CONSEQUENCES.

EQUAL STANDING

YOU SHOULD CONSIDER THIS CASE AS AN ACTION BETWEEN PERSONS OF EQUAL STANDING IN THE COMMUNITY, OF EQUAL WORTH, AND HOLDING THE SAME OR SIMILAR STATIONS OF LIFE. A CORPORATE ENTITY, SUCH AS UPMC SHADYSIDE HOSPITAL, AND A PRIVATE INDIVIDUAL ARE BOTH ENTITLED TO THE SAME FAIR TRIAL AT YOUR HANDS. THAT IS, ALL PARTIES ARE TO BE DEALT WITH AS EQUALS IN A COURT OF JUSTICE.

EVIDENCE ADMITTED FOR A LIMITED PURPOSE

IN CERTAIN INSTANCES EVIDENCE MAY BE ADMITTED ONLY FOR A PARTICULAR PURPOSE AND NOT GENERALLY FOR ALL PURPOSES. WHENEVER EVIDENCE WAS ADMITTED FOR A LIMITED PURPOSE, CONSIDER IT ONLY FOR THAT PURPOSE, AND NO OTHER PURPOSE.

SPECIFICALLY, PLAINTIFF'S EXHIBITS P-3 AND P-4 HAVE BEEN ADMITTED INTO EVIDENCE FOR A PARTICULAR LIMITED PURPOSE. THIS COMMUNICATION MAY BE CONSIDERED BY YOU AS EVIDENCE THAT PLAINTIFF MADE A COMPLAINT ABOUT THE MATTERS THAT ARE DISCUSSED IN THESE EXHIBITS, AND IT MAY BE CONSIDERED BY YOU ONLY FOR THAT PURPOSE AND FOR NO OTHER. THESE EXHIBITS CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF THE TRUTH OF THE STATEMENTS THAT PLAINTIFF MADE IN THE COMMUNICATIONS, BUT ONLY AS EVIDENCE THAT HE MADE THE COMMUNICATIONS.

NOT REQUIRED TO ACCEPT UNCONTRADICTED TESTIMONY  
YOU ARE NOT REQUIRED TO ACCEPT ANY TESTIMONY, EVEN THOUGH THE TESTIMONY IS UNCONTRADICTED AND THE WITNESS IS NOT IMPEACHED. YOU MAY DECIDE, BECAUSE OF THE WITNESS'S BEARING AND DEMEANOR, BECAUSE OF THE INHERENT IMPROBABILITY OF HIS OR HER TESTIMONY, OR BECAUSE OF OTHER REASONS SUFFICIENT TO YOU, THAT SUCH TESTIMONY IS NOT WORTHY OF BELIEF.

JURORS' NOTES

YOUR NOTES ARE NOT EVIDENCE IN THE CASE AND MUST NOT TAKE PRECEDENCE OVER YOUR INDEPENDENT RECOLLECTION OF THE EVIDENCE. NOTES ARE ONLY AN AID TO YOUR RECOLLECTION AND ARE NOT ENTITLED TO GREATER WEIGHT THAN YOUR RECOLLECTION OF WHAT THE EVIDENCE ACTUALLY IS. YOU SHOULD NOT DISCLOSE ANY NOTES TAKEN TO ANYONE OTHER THAN A FELLOW JUROR.

YOU WERE NOT OBLIGATED TO TAKE NOTES. IF YOU DID NOT TAKE NOTES YOU SHOULD NOT BE INFLUENCED BY THE NOTES OF ANOTHER JUROR, BUT INSTEAD SHOULD RELY UPON YOUR OWN RECOLLECTION OF THE EVIDENCE.

**III. CREDIBILITY OF WITNESSES/ WEIGHT OF TESTIMONY IN GENERAL.**

**IN GENERAL**

YOU MUST CONSIDER ALL OF THE EVIDENCE, BUT THIS DOES NOT MEAN YOU MUST ACCEPT ALL OF THE EVIDENCE AS TRUE OR ACCURATE. YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES AND THE WEIGHT THEIR TESTIMONY DESERVES.

YOU MAY BE GUIDED BY THE APPEARANCE AND CONDUCT OF THE WITNESS, BY THE MANNER IN WHICH THE WITNESS TESTIFIES, BY THE CHARACTER OF THE TESTIMONY GIVEN AND BY EVIDENCE OR TESTIMONY TO THE CONTRARY.

YOU SHOULD CAREFULLY SCRUTINIZE ALL THE TESTIMONY GIVEN, THE CIRCUMSTANCES UNDER WHICH EACH WITNESS HAS TESTIFIED, AND EVERY MATTER IN EVIDENCE WHICH TENDS TO SHOW WHETHER A WITNESS IS WORTHY OF BELIEF. CONSIDER EACH WITNESS'S INTELLIGENCE, MOTIVE, STATE OF MIND, AND DEMEANOR OR MANNER WHILE ON THE STAND. CONSIDER THE WITNESS'S ABILITY TO HAVE OBSERVED THE MATTERS AS TO WHICH HE OR SHE HAS TESTIFIED, AND WHETHER HE OR SHE

IMPRESSES YOU AS HAVING AN ACCURATE RECOLLECTION OF THESE MATTERS. CONSIDER ANY BUSINESS, PERSONAL OR OTHER RELATIONSHIP A WITNESS MIGHT HAVE WITH EITHER SIDE OF THE CASE; THE MANNER IN WHICH EACH WITNESS MIGHT BE AFFECTED BY THE VERDICT; AND THE EXTENT TO WHICH, IF AT ALL, EACH WITNESS IS EITHER SUPPORTED OR CONTRADICTED BY OTHER EVIDENCE IN THE CASE.

INCONSISTENCIES OR DISCREPANCIES

CONSIDER INCONSISTENCIES OR DISCREPANCIES IN THE TESTIMONY OF A WITNESS OR BETWEEN DIFFERENT WITNESSES, WHICH MAY OR MAY NOT CAUSE YOU TO DISCREDIT SUCH TESTIMONY. TWO OR MORE PERSONS WITNESSING AN INCIDENT OR A TRANSACTION MAY SEE OR HEAR IT DIFFERENTLY, AND INNOCENT MIS-RECOLLECTION, LIKE FAILURE OF RECOLLECTION, IS NOT AN UNCOMMON EXPERIENCE. IN WEIGHING THE EFFECT OF A DISCREPANCY, ALWAYS CONSIDER WHETHER IT PERTAINS TO A MATTER OF IMPORTANCE OR AN UNIMPORTANT DETAIL, AND WHETHER THE DISCREPANCY RESULTS FROM INNOCENT ERROR

OR INTENTIONAL FALSEHOOD.

AFTER MAKING YOUR OWN JUDGMENT, GIVE THE TESTIMONY OF EACH WITNESS THE WEIGHT YOU THINK IT DESERVES. YOU MAY, IN SHORT, ACCEPT OR REJECT THE TESTIMONY OF ANY WITNESS IN WHOLE OR IN PART.

FALSE IN ONE, FALSE IN ALL

IF YOU FIND THAT A WITNESS HAS LIED TO YOU IN ANY MATERIAL PORTION OF HIS OR HER TESTIMONY, YOU MAY DISREGARD THAT WITNESS'S TESTIMONY IN ITS ENTIRETY. I SAY THAT YOU MAY DISREGARD SUCH TESTIMONY, NOT THAT YOU MUST. HOWEVER, YOU SHOULD CONSIDER WHETHER THE UNTRUE PART OF THE TESTIMONY WAS THE RESULT OF A MISTAKE OR INADVERTENCE, OR WAS, RATHER, WILLFUL AND STATED WITH A DESIGN OR INTENT TO DECEIVE.

NUMBER OF WITNESSES NOT IMPORTANT

THE WEIGHT OF THE EVIDENCE IS NOT DETERMINED BY THE NUMBER OF WITNESSES TESTIFYING FOR EITHER SIDE. YOU MAY

FIND THAT THE TESTIMONY OF A SMALL NUMBER OF WITNESSES AS TO ANY FACT IS MORE CREDIBLE THAN THAT OF A LARGER NUMBER OF WITNESSES TO THE CONTRARY.

DEPOSITIONS - USE AS EVIDENCE

CERTAIN OUT OF COURT TESTIMONY OF WITNESSES HAS BEEN PRESENTED TO YOU. SUCH TESTIMONY WAS GIVEN UNDER OATH PRIOR TO THIS TRIAL, DURING DEPOSITIONS OF THE WITNESSES. THIS METHOD IS PERMITTED IN ORDER TO SIMPLIFY THE PRESENTATION OF THE EVIDENCE, AND YOU SHOULD NOT REGARD EVIDENCE PRESENTED IN THIS WAY AS ANY DIFFERENT FROM ANY OTHER ORAL TESTIMONY. YOU MAY ASSESS THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED BY DEPOSITION IN THE SAME MANNER AS YOU DO WITNESSES WHO TESTIFY DIRECTLY IN OPEN COURT.

BURDEN OF PROOF/PREPONDERANCE OF THE EVIDENCE

THE PLAINTIFF HAS THE BURDEN OF PROOF IN THIS CASE TO PROVE ALL OF THE ELEMENTS OF HIS CLAIMS. THIS IS A CIVIL CASE AND PLAINTIFF'S BURDEN I AM TALKING ABOUT IS THE BURDEN TO ESTABLISH EACH ELEMENT OF THE CLAIM BY A PREPONDERANCE OF THE EVIDENCE.

A PREPONDERANCE OF THE EVIDENCE MEANS SUCH EVIDENCE AS, WHEN CONSIDERED AND COMPARED WITH THAT OPPOSED TO IT, HAS MORE CONVINCING FORCE, AND PRODUCES IN YOUR MINDS THE BELIEF THAT WHAT IS SOUGHT TO BE PROVED IS MORE LIKELY TRUE THAN NOT TRUE. THIS RULE DOES NOT, OF COURSE, REQUIRE PROOF TO AN ABSOLUTE CERTAINTY, BECAUSE ABSOLUTE CERTAINTY IS SELDOM IF EVER POSSIBLE. WHEN YOU GO INTO THE JURY ROOM, IMAGINE THAT YOU HAVE ON THE TABLE THE SCALES OF JUSTICE, ON WHICH TWO TRAYS ARE HANGING EVENLY IN BALANCE. NOW LABEL THE RIGHT HAND TRAY "PLAINTIFF'S TRAY" AND PUT ONTO THAT TRAY ALL OF THE EVIDENCE ON A PARTICULAR CLAIM WHICH YOU FEEL FAVORS PLAINTIFF, GIVING TO THAT EVIDENCE THE WEIGHT THAT YOU

BELIEVE IT IS FAIRLY ENTITLED TO RECEIVE.

NEXT PLACE ON "DEFENDANT'S TRAY" ALL OF THE EVIDENCE IN THE CASE THAT FAVORS DEFENDANT'S SIDE OF THAT CLAIM, AGAIN GIVING TO THAT EVIDENCE THE WEIGHT THAT YOU BELIEVE IT IS FAIRLY ENTITLED TO RECEIVE. THE WEIGHT OF THE EVIDENCE IS NOT THE NUMBER OF PERSONS TESTIFYING AGAINST EITHER PARTY, RATHER IT IS THE QUALITY OF THE TESTIMONY GIVEN. FOR EXAMPLE, ONE PERSON WHO SAW AN EVENT AND TESTIFIED ACCURATELY AS TO WHAT WAS SEEN MAY HAVE THE SAME WEIGHT AS TEN PERSONS TESTIFYING TO THE SAME EVENT ON THE OTHER SIDE. THEN, IF PLAINTIFF'S TRAY GOES DOWN, IN OTHER WORDS, IF PLAINTIFF'S TRAY OUTWEIGHS DEFENDANT'S EVIDENCE, PLAINTIFF HAS SUSTAINED HIS BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE AND YOUR VERDICT SHOULD BE FOR PLAINTIFF AND AGAINST DEFENDANT ON THAT CLAIM.

DEFENDANT'S STATUS DOES NOT INFER LIABILITY

SIMPLY BECAUSE A DEFENDANT IS SUED DOES NOT MEAN THAT THE DEFENDANT IS LIABLE. ANYONE CAN FILE A LAWSUIT OR A DISCRIMINATION CHARGE. THE FACT THAT THE PLAINTIFF HAS FILED THIS LAWSUIT DOES NOT, IN ITSELF, MEAN THAT THE DEFENDANT HAS DONE ANYTHING THAT THE LAW PROHIBITS. THAT IS FOR YOU TO DECIDE ON THE BASIS OF THE EVIDENCE.

#### **IV. SUBSTANTIVE LAW**

IN THIS CASE, PLAINTIFF, ROSS FRANCESKI, ASSERTS LEGAL CLAIMS AGAINST DEFENDANT, UNIVERSITY OF PITTSBURGH MEDICAL CENTER, HIS FORMER EMPLOYER, OF WHOM I WILL REFER TO IN THESE INSTRUCTIONS AS UPMC SHADYSIDE HOSPITAL. PLAINTIFF ASSERTS CLAIMS OF RETALIATION FOR HAVING ENGAGED IN PROTECTED ACTIVITY. I WILL NOW INSTRUCT YOU MORE FULLY ON PLAINTIFF'S CLAIM.

#### **NATURE OF THE CLAIM – RETALIATION**

IN THIS CASE, PLAINTIFF CLAIMS THAT UPMC SHADYSIDE HOSPITAL RETALIATED AGAINST HIM BY TERMINATING HIS EMPLOYMENT IN OCTOBER 2007. PLAINTIFF CLAIMS THAT UPMC SHADYSIDE HOSPITAL DID THIS BECAUSE HE ENGAGED IN “PROTECTED ACTIVITY.” SPECIFICALLY, PLAINTIFF CLAIMS THAT HE WAS TERMINATED FOR EXERCISING HIS RIGHT TO COMPLAIN ABOUT UNLAWFUL DISCRIMINATORY CONDUCT IN HIS WORKPLACE.

UPMC SHADYSIDE HOSPITAL DENIES THAT PLAINTIFF WAS RETALIATED AGAINST IN ANY WAY AND HAS PRESENTED EVIDENCE OF THE BUSINESS REASONS FOR PLAINTIFF'S DISCHARGE.

I WILL NOW INSTRUCT YOU MORE FULLY ON THE ISSUES YOU MUST ADDRESS WITH RESPECT TO PLAINTIFF'S RETALIATION CLAIM.

### **ELEMENTS OF PLAINTIFF'S RETALIATION CLAIMS**

PLAINTIFF CLAIMS THAT, WHEN UPMC SHADYSIDE HOSPITAL DISCHARGED HIM, THE HOSPITAL WAS RETALIATING AGAINST HIM FOR HAVING ENGAGED IN "PROTECTED ACTIVITY."

PLAINTIFF'S OVERALL BURDEN IS TO PROVE THAT A RETALIATORY MOTIVE WAS A DETERMINATIVE FACTOR IN THE DECISION TO TERMINATE HIS EMPLOYMENT. TO PREVAIL ON HIS CLAIM OF RETALIATION, PLAINTIFF MUST INITIALLY PROVE A *PRIMA FACIE* CASE, WHICH MEANS THAT HE MUST PROVE ALL OF THE FOLLOWING ELEMENTS BY A PREPONDERANCE OF THE EVIDENCE:

FIRST: THAT HE ENGAGED IN PROTECTED ACTIVITY, WHICH MEANS, IN THIS CASE, THAT HE OPPOSED A PRACTICE MADE UNLAWFUL UNDER FEDERAL OR STATE LAW, SUCH AS MAKING A COMPLAINT OF SEXUAL HARASSMENT OR HOSTILE WORK ENVIRONMENT. A HOSTILE WORK ENVIRONMENT OCCURS WHEN UNWELCOME CONDUCT OR STATEMENTS, WHICH MAY BE SEXUALLY AND/OR ETHNICALLY MOTIVATED, ARE SEVERE AND PERVERSIVE, AND UNREASONABLY INTERFERE WITH A PERSON'S JOB PERFORMANCE OR OTHERWISE CREATE AN INTIMATING, HOSTILE OR OFFENSIVE WORKING ENVIRONMENT.

SECOND: THAT HE WAS SUBJECT TO A MATERIALLY ADVERSE ACTION AT THE TIME, OR AFTER, THE PROTECTED ACTIVITY TOOK PLACE.

THIRD: THERE IS A CAUSAL CONNECTION BETWEEN HIS DISCHARGE AND HIS PROTECTED ACTIVITY.

### **PROTECTED ACTIVITY**

PROTECTED ACTIVITY UNDER TITLE VII AND THE PENNSYLVANIA HUMAN RIGHTS ACT (PHRA) MEANS, IN THIS CASE,

THAT PLAINTIFF COMMUNICATED OPPOSITION TO A PRACTICE THAT VIOLATED TITLE VII OR THE PHRA, OR THAT HE REASONABLY BELIEVED VIOLATED TITLE VII OR THE PHRA. A COMPLAINT WHICH DOES NOT REFER TO UNLAWFUL DISCRIMINATION DIRECTLY OR BY CLEAR INFERENCE DOES NOT CONSTITUTE PROTECTED ACTIVITY. THUS, IN ORDER FOR PLAINTIFF TO ESTABLISH THAT HE ENGAGED IN A PROTECTED ACTIVITY, WHICH IS ONE OF THE ELEMENTS OF HIS RETALIATION CLAIM, HE MUST PROVE THAT HE COMPLAINED TO THE UPMC SHADYSIDE HOSPITAL ABOUT CONDUCT THAT HE REASONABLY BELIEVED WAS IN VIOLATION OF THE LAW.

TO RECOVER FOR RETALIATION, PLAINTIFF MUST THEREFORE SHOW THAT, WHEN HE MADE HIS COMPLAINT, HE WAS ACTING UNDER A GOOD FAITH, REASONABLE BELIEF THAT A VIOLATION OF TITLE VII OR THE PHRA EXISTED. PLAINTIFF NEED NOT PROVE THE MERITS OF THE UNDERLYING DISCRIMINATION COMPLAINT. HOWEVER, HE MUST PROVE THAT HE SUBJECTIVELY BELIEVED THAT UPMC SHADYSIDE HOSPITAL WAS ENGAGED IN UNLAWFUL EMPLOYMENT PRACTICES AND THAT HIS BELIEF WAS

OBJECTIVELY REASONABLE IN LIGHT OF THE FACTS AND RECORD PRESENTED. IT IS NOT ENOUGH FOR PLAINTIFF TO ALLEGE THAT HIS BELIEF IN THIS REGARD WAS HONEST AND BONA FIDE. RATHER, THE ALLEGATIONS AND RECORD MUST INDICATE PLAINTIFF'S BELIEF, ALTHOUGH PERHAPS MISTAKEN, WAS OBJECTIVELY REASONABLE.

### **CAUSATION**

TO RECOVER FOR RETALIATION, PLAINTIFF MUST ALSO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THERE IS A "CAUSAL CONNECTION" BETWEEN HIS PROTECTED ACTIVITY AND UPMC SHADYSIDE HOSPITAL'S DECISION TO DISCHARGE HIM. THE NECESSARY CAUSAL CONNECTION MAY BE SHOWN IN MANY WAYS. FOR EXAMPLE, YOU MAY OR MAY NOT FIND THAT THERE IS A SUFFICIENT CONNECTION THROUGH TIMING, THAT IS THAT UPMC SHADYSIDE HOSPITAL'S ACTION OF DISCHARGING PLAINTIFF FOLLOWED SHORTLY AFTER IT BECAME AWARE OF PLAINTIFF'S COMPLAINT. CAUSATION IS, HOWEVER, NOT

NECESSARILY RULED OUT BY A MORE EXTENDED PASSAGE OF TIME. CAUSATION MAY OR MAY NOT BE PROVEN BY ANTAGONISM SHOWN TOWARD PLAINTIFF OR A CHANGE IN DEMEANOR TOWARD PLAINTIFF.

ULTIMATELY, YOU MUST DECIDE WHETHER PLAINTIFF'S OPPOSITION HAD A DETERMINATIVE EFFECT ON UPMC SHADYSIDE HOSPITAL'S DECISION TO DISCHARGE HIM. "DETERMINATIVE EFFECT" MEANS THAT, IF NOT FOR PLAINTIFF'S OPPOSITION TO PRACTICES HE BELIEVED WERE UNLAWFUL, UPMC SHADYSIDE HOSPITAL WOULD NOT HAVE DISCHARGED HIM IN OCTOBER 2007.

**PRETEXT**

IF PLAINTIFF ESTABLISHES EACH ELEMENT OF HIS CLAIM OF RETALIATION, THEN UPMC SHADYSIDE HOSPITAL MUST ARTICULATE A LEGITIMATE NON-RETALIATORY REASON FOR ITS DECISION TO DISCHARGE PLAINTIFF. UPMC SHADYSIDE HOSPITAL HAS ARTICULATED A NON-RETALIATORY REASON FOR DISCHARGING PLAINTIFF, NAMELY, HIS CONDUCT ON SEPTEMBER 26, 2007. PLAINTIFF MAY STILL PREVAIL, HOWEVER, IF HE PROVES

THAT UPMC SHADYSIDE HOSPITAL'S GIVEN REASON FOR DISCHARGING HIM WAS A PRETEXT – WHICH MEANS THE GIVEN REASON IS FALSE OR MADE-UP.

PLAINTIFF MAY SHOW PRETEXT BY PROVING THAT A RETALIATORY MOTIVE MORE LIKELY MOTIVATED UPMC SHADYSIDE HOSPITAL OR BY SHOWING THAT UPMC SHADYSIDE HOSPITAL'S EXPLANATION IS UNWORTHY OF BELIEF. WITH RESPECT TO PLAINTIFF'S RETALIATION CLAIM, THIS MEANS THAT PLAINTIFF MUST DEMONSTRATE, BY A PREPONDERANCE OF THE EVIDENCE, THAT BUT FOR THE FACT HE ENGAGED IN A PROTECTED ACTIVITY, *I.E.*, OPPOSED WHAT HE BELIEVED TO BE SEXUAL HARASSMENT OR HARASSMENT BASED UPON GENDER AND/OR NATIONAL ORIGIN, UPMC SHADYSIDE HOSPITAL WOULD NOT HAVE DISCHARGED HIM. AT ALL TIMES, THE BURDEN OF PROOF IS ON PLAINTIFF TO SHOW THAT HIS PROTECTED ACTIVITY PLAYED A ROLE IN UPMC SHADYSIDE HOSPITAL'S DECISION-MAKING PROCESS AND THAT IT HAD A DETERMINATIVE EFFECT ON THE OUTCOME OF THE PROCESS.

**BUSINESS JUDGMENT**

TO DISCREDIT THE DEFENDANT'S EXPLANATIONS FOR ITS ACTIONS, PLAINTIFF CANNOT SIMPLY SHOW THAT UPMC SHADYSIDE HOSPITAL'S DECISIONS WERE WRONG OR MISTAKEN, BECAUSE THE ISSUE IS WHETHER UNLAWFUL RETALIATION MOTIVATED UPMC SHADYSIDE HOSPITAL, NOT WHETHER UPMC SHADYSIDE HOSPITAL'S DECISIONS WERE WISE, SHREWD, PRUDENT, OR COMPETENT. YOU MAY NOT SUBSTITUTE YOUR JUDGMENT FOR UPMC SHADYSIDE HOSPITAL'S JUDGMENT ON BUSINESS MATTERS. AN EMPLOYER IS ENTITLED TO MAKE AN EMPLOYMENT DECISION FOR A GOOD REASON, A BAD REASON OR FOR NO REASON AT ALL, SO LONG AS THE DECISION IS NOT MOTIVATED BY AN UNLAWFUL INTENT TO RETALIATE.

**EFFECT OF INSTRUCTIONS AS TO DAMAGES**

IF, AFTER CONSIDERING THE EVIDENCE, YOU FIND THAT UPMC SHADYSIDE HOSPITAL RETALIATED AGAINST PLAINTIFF BECAUSE HE ENGAGED IN PROTECTED ACTIVITY WHEN IT

DISCHARGED HIM IN OCTOBER 2007, THEN YOU MUST DETERMINE WHAT DAMAGES PLAINTIFF IS TO BE AWARDED. THE FACT THAT I WILL INSTRUCT YOU AS TO THE PROPER MEASURES OF DAMAGES SHOULD NOT BE CONSIDERED AS A SUGGESTION THAT YOU SHOULD FIND IN FAVOR OF PLAINTIFF. IF YOU FIND IN FAVOR OF UPMC SHADYSIDE HOSPITAL, YOU WILL NOT NEED TO CONSIDER DAMAGES. INSTRUCTIONS ON DAMAGES ARE GIVEN FOR YOUR GUIDANCE, IN THE EVENT THAT YOU FIND IN FAVOR OF PLAINTIFF FROM A PREPONDERANCE OF THE EVIDENCE IN ACCORDANCE WITH THE OTHER INSTRUCTIONS GIVEN TO YOU PREVIOUSLY.

### **COMPENSATORY DAMAGES**

IF, AFTER CONSIDERING THE EVIDENCE, YOU FIND THAT UPMC SHADYSIDE HOSPITAL RETALIATED AGAINST PLAINTIFF BECAUSE HE ENGAGED IN PROTECTED ACTIVITY, THEN YOU MUST ALSO CONSIDER THE ISSUE OF COMPENSATORY DAMAGES. YOU MUST AWARD PLAINTIFF AN AMOUNT THAT WILL FAIRLY COMPENSATE HIM FOR ANY INJURY HE ACTUALLY SUSTAINED AS A RESULT OF THE UPMC SHADYSIDE HOSPITAL'S UNLAWFUL

CONDUCT. THE DAMAGES THAT YOU AWARD MUST BE FAIR COMPENSATION, NO MORE AND NO LESS. THE AWARD OF COMPENSATORY DAMAGES IS MEANT TO PUT THE PLAINTIFF IN THE POSITION HE WOULD HAVE OCCUPIED IF THE RETALIATION HAD NOT OCCURRED. PLAINTIFF HAS THE BURDEN OF PROVING DAMAGES BY A PREPONDERANCE OF THE EVIDENCE.

PLAINTIFF MUST SHOW THAT THE INJURY HE ALLEGES WOULD NOT HAVE OCCURRED WITHOUT UPMC SHADYSIDE HOSPITAL'S CONDUCT. PLAINTIFF MUST ALSO SHOW THAT UPMC SHADYSIDE HOSPITAL'S CONDUCT PLAYED A SUBSTANTIAL PART IN BRINGING ABOUT THE INJURY, AND THAT THE INJURY WAS EITHER A DIRECT RESULT OR A REASONABLY PROBABLE CONSEQUENCE OF THE UPMC SHADYSIDE HOSPITAL'S CONDUCT. THIS TEST – A SUBSTANTIAL PART IN BRINGING ABOUT THE INJURY – IS TO BE DISTINGUISHED FROM THE TEST YOU MUST EMPLOY IN DETERMINING WHETHER UPMC SHADYSIDE HOSPITAL'S ACTIONS WERE MOTIVATED BY AN INTENT TO RETALIATE. IN OTHER WORDS, EVEN ASSUMING THAT UPMC SHADYSIDE HOSPITAL'S ACTIONS WERE MOTIVATED BY AN INTENT TO RETALIATE,

PLAINTIFF IS NOT ENTITLED TO DAMAGES FOR AN INJURY UNLESS UPMC SHADYSIDE HOSPITAL'S RETALIATORY ACTIONS ACTUALLY PLAYED A SUBSTANTIAL PART IN BRINGING ABOUT THAT INJURY.

IN DETERMINING THE AMOUNT OF ANY COMPENSATORY DAMAGES THAT YOU DECIDE TO AWARD, YOU SHOULD BE GUIDED BY COMMON SENSE. YOU MUST USE SOUND JUDGMENT IN FIXING AN AWARD OF COMPENSATORY DAMAGES, DRAWING REASONABLE INFERENCES FROM THE FACTS IN EVIDENCE. YOU MAY NOT AWARD DAMAGES BASED ON SYMPATHY, SPECULATION, OR GUESSWORK.

IF YOU FIND THAT THE UPMC SHADYSIDE HOSPITAL RETALIATED AGAINST PLAINTIFF, YOU MAY AWARD HIM DAMAGES FOR ANY PAIN, SUFFERING, OR MENTAL ANGUISH THAT HE EXPERIENCED AS A CONSEQUENCE OF UPMC SHADYSIDE HOSPITAL'S UNLAWFUL CONDUCT. NO EVIDENCE OF THE MONETARY VALUE OF SUCH INTANGIBLE THINGS AS PAIN AND SUFFERING HAS BEEN, OR NEED BE, INTRODUCED INTO EVIDENCE. THERE IS NO EXACT STANDARD FOR FIXING THE COMPENSATION TO BE AWARDED FOR THESE ELEMENTS OF

DAMAGE. ANY AWARD YOU MAKE SHOULD BE FAIR IN LIGHT OF THE EVIDENCE PRESENTED AT THE TRIAL.

I INSTRUCT YOU THAT IN AWARDING COMPENSATORY DAMAGES, YOU ARE NOT TO AWARD DAMAGES FOR THE AMOUNT OF WAGES THAT PLAINTIFF WOULD HAVE EARNED, EITHER IN THE PAST OR IN THE FUTURE, IF HE HAD CONTINUED IN EMPLOYMENT WITH UPMC SHADYSIDE HOSPITAL. THESE ELEMENTS OF RECOVERY OF WAGES THAT PLAINTIFF WOULD HAVE RECEIVED FROM UPMC SHADYSIDE HOSPITAL ARE CALLED "BACK PAY" AND "FRONT PAY." YOU, THE JURY, WILL ALSO DETERMINE THE AMOUNT OF "BACK PAY," AND THE AMOUNT OF "FRONT PAY," IF ANY, TO BE AWARDED, BUT "BACK PAY" AND "FRONT PAY" ARE TO BE AWARDED SEPARATELY UNDER INSTRUCTIONS THAT I WILL SOON GIVE YOU, AND ANY AMOUNTS FOR "BACK PAY" AND "FRONT PAY" ARE TO BE ENTERED SEPARATELY ON THE VERDICT FORM.

AS I INSTRUCTED YOU PREVIOUSLY, PLAINTIFF HAS THE BURDEN OF PROVING DAMAGES BY A PREPONDERANCE OF THE EVIDENCE. BUT THE LAW DOES NOT REQUIRE THAT A PLAINTIFF PROVE THE AMOUNT OF LOSSES WITH MATHEMATICAL PRECISION;

IT REQUIRES ONLY AS MUCH DEFINITENESS AND ACCURACY AS CIRCUMSTANCES PERMIT.

**BACK PAY**

IF, AFTER CONSIDERATION OF THE EVIDENCE, YOU FIND THAT UPMC SHADYSIDE HOSPITAL RETALIATED AGAINST HIM BECAUSE HE ENGAGED IN A PROTECTED ACTIVITY, THEN YOU MUST DETERMINE THE AMOUNT OF LOST WAGES THAT UPMC SHADYSIDE HOSPITAL'S ACTIONS HAVE CAUSED PLAINTIFF. PLAINTIFF HAS THE BURDEN OF PROVING DAMAGES BY A PREPONDERANCE OF THE EVIDENCE. YOU MAY AWARD AS ACTUAL DAMAGES AN AMOUNT THAT REASONABLY COMPENSATES PLAINTIFF FOR ANY LOST WAGES, TAKING INTO CONSIDERATION ANY INCREASES IN PAY THAT PLAINTIFF WOULD HAVE RECEIVED HAD HE NOT BEEN THE SUBJECT OF INTENTIONAL RETALIATION.

BACK PAY DAMAGES, IF ANY, APPLY FROM THE TIME PLAINTIFF WAS UNLAWFULLY TERMINATED UNTIL THE DATE OF YOUR VERDICT.

IF YOU AWARD BACK PAY, YOU ARE INSTRUCTED TO DEDUCT FROM THE BACK PAY FIGURE WHATEVER WAGES PLAINTIFF HAS OBTAINED, OR REASONABLY COULD HAVE OBTAINED, FROM OTHER EMPLOYMENT DURING THIS PERIOD.

**FRONT PAY**

YOU MAY DETERMINE SEPARATELY A MONETARY AMOUNT EQUAL TO THE PRESENT VALUE OF ANY FUTURE WAGES AND BENEFITS THAT PLAINTIFF WOULD REASONABLY HAVE EARNED FROM UPMC SHADYSIDE HOSPITAL HAD UPMC SHADYSIDE HOSPITAL NOT DISCHARGED HIM FOR THE PERIOD OF TIME FROM THE DATE OF YOUR VERDICT THROUGH A REASONABLE PERIOD OF TIME IN THE FUTURE. FROM THIS FIGURE YOU MUST SUBTRACT THE AMOUNT OF EARNINGS AND BENEFITS PLAINTIFF WILL RECEIVE FROM OTHER EMPLOYMENT DURING THAT TIME. PLAINTIFF HAS THE BURDEN OF PROVING THESE DAMAGES BY A PREPONDERANCE OF THE EVIDENCE.

IF YOU FIND THAT PLAINTIFF IS ENTITLED TO RECOVER FOR FUTURE EARNINGS FROM THE UPMC SHADYSIDE HOSPITAL, THEN

YOU MUST REDUCE ANY AWARD TO ITS PRESENT VALUE BY CONSIDERING THE INTEREST THAT PLAINTIFF COULD EARN ON THE AMOUNT ON THE AWARD IF HE MADE A RELATIVELY RISK-FREE INVESTMENT. YOU MUST MAKE THIS REDUCTION BECAUSE AN AWARD OF AN AMOUNT REPRESENTING FUTURE LOSS OF EARNINGS IS MORE VALUABLE TO PLAINTIFF IF HE RECEIVES IT TODAY THAN IF IT WERE RECEIVED AT THE TIME IN THE FUTURE WHEN IT WOULD HAVE BEEN EARNED. IT IS MORE VALUABLE BECAUSE PLAINTIFF CAN EARN INTEREST ON IT FOR THE PERIOD OF TIME BETWEEN THE DATE OF THE AWARD AND THE DATE HE WOULD HAVE EARNED THE MONEY. SO, YOU SHOULD DECREASE THE AMOUNT OF ANY AWARD FOR LOSS OF FUTURE EARNINGS BY THE AMOUNT OF INTEREST THAT PLAINTIFF CAN EARN ON THAT AMOUNT IN THE FUTURE.

### **PUNITIVE DAMAGES**

PLAINTIFF CLAIMS THE ACTS OF THE WERE DONE WITH MALICE OR RECKLESS INDIFFERENCE TO HIS FEDERALLY PROTECTED RIGHTS AND THAT AS A RESULT THERE SHOULD BE

AN AWARD OF WHAT ARE CALLED “PUNITIVE” DAMAGES. A JURY MAY AWARD PUNITIVE DAMAGES TO PUNISH A DEFENDANT, OR TO DETER THE DEFENDANT AND OTHERS LIKE THE DEFENDANT FROM COMMITTING SUCH CONDUCT IN THE FUTURE.

AN AWARD OF PUNITIVE DAMAGES IS PERMISSIBLE IN THIS CASE ONLY IF YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT THOSE RESPONSIBLE FOR DISCHARGING PLAINTIFF, PERSONALLY ACTED WITH MALICE OR RECKLESS INDIFFERENCE TO PLAINTIFF’S FEDERALLY PROTECTED RIGHTS. AN ACTION IS WITH MALICE IF A PERSON KNOWS THAT IT VIOLATES THE FEDERAL LAW PROHIBITING DISCRIMINATION AND DOES IT ANYWAY. AN ACTION IS WITH RECKLESS INDIFFERENCE IF TAKEN WITH KNOWLEDGE THAT IT MAY VIOLATE THE LAW.

BUT, EVEN IF YOU MAKE A FINDING THAT THERE HAS BEEN AN ACT OF DISCRIMINATION UNDERTAKEN WITH MALICE OR RECKLESS DISREGARD OF PLAINTIFF’S FEDERAL RIGHTS, YOU CANNOT AWARD PUNITIVE DAMAGES IF UPMC SHADYSIDE HOSPITAL PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT IT MADE A GOOD FAITH ATTEMPT TO COMPLY WITH THE LAW,

BY ADOPTING POLICIES AND PROCEDURES DESIGNED TO PREVENT UNLAWFUL DISCRIMINATION SUCH AS THAT ALLEGED BY PLAINTIFF.

AN AWARD OF PUNITIVE DAMAGES IS DISCRETIONARY; THAT IS, IF YOU FIND THAT THE LEGAL REQUIREMENTS FOR PUNITIVE DAMAGES ARE SATISFIED AND THAT UPMC SHADYSIDE HOSPITAL HAS NOT PROVED THAT IT MADE A GOOD-FAITH ATTEMPT TO COMPLY WITH THE LAW, THEN YOU MAY DECIDE TO AWARD PUNITIVE DAMAGES, OR YOU MAY DECIDE NOT TO AWARD THEM. I WILL NOW DISCUSS SOME CONSIDERATIONS THAT SHOULD GUIDE YOUR EXERCISE OF THIS DISCRETION.

IF YOU HAVE FOUND THE ELEMENTS PERMITTING PUNITIVE DAMAGES, AS DISCUSSED IN THIS INSTRUCTION, THEN YOU SHOULD CONSIDER THE PURPOSES OF PUNITIVE DAMAGES. THE PURPOSES OF PUNITIVE DAMAGES ARE TO PUNISH A DEFENDANT FOR MALICIOUS OR RECKLESS DISREGARD OF FEDERAL RIGHTS, OR TO DETER A DEFENDANT AND OTHERS LIKE THE DEFENDANT FROM DOING SIMILAR THINGS IN THE FUTURE, OR BOTH. THUS, YOU MAY CONSIDER WHETHER TO AWARD PUNITIVE DAMAGES TO

PUNISH UPMC SHADYSIDE HOSPITAL. YOU SHOULD ALSO CONSIDER WHETHER ACTUAL DAMAGES STANDING ALONE ARE SUFFICIENT TO DETER OR PREVENT UPMC SHADYSIDE HOSPITAL FROM AGAIN PERFORMING ANY WRONGFUL ACTS IT MAY HAVE PERFORMED. FINALLY, YOU SHOULD CONSIDER WHETHER AN AWARD OF PUNITIVE DAMAGES IN THIS CASE IS LIKELY TO DETER OTHERS FROM PERFORMING WRONGFUL ACTS SIMILAR TO THOSE UPMC SHADYSIDE HOSPITAL MAY HAVE COMMITTED.

IF YOU DECIDE TO AWARD PUNITIVE DAMAGES, THEN YOU SHOULD ALSO CONSIDER THE PURPOSES OF PUNITIVE DAMAGES IN DECIDING THE AMOUNT OF PUNITIVE DAMAGES TO AWARD. THAT IS, IN DECIDING THE AMOUNT OF PUNITIVE DAMAGES, YOU SHOULD CONSIDER THE DEGREE TO WHICH THE UPMC SHADYSIDE HOSPITAL SHOULD BE PUNISHED FOR ITS WRONGFUL CONDUCT, AND THE DEGREE TO WHICH AN AWARD OF ONE SUM OR ANOTHER WILL DETER THE UPMC SHADYSIDE HOSPITAL OR OTHERS FROM COMMITTING SIMILAR WRONGFUL ACTS IN THE FUTURE.

**V. PROCESS OF JURY DELIBERATION**

YOUR VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN ORDER TO RETURN A VERDICT, IT IS NECESSARY THAT EACH JUROR AGREE. IN OTHER WORDS, YOUR VERDICT MUST BE UNANIMOUS.

IT IS YOUR DUTY AS JURORS TO CONSULT WITH ONE ANOTHER AND TO DELIBERATE WITH A VIEW TO REACHING AN AGREEMENT, IF YOU CAN DO SO, WITHOUT VIOLATION TO INDIVIDUAL JUDGMENT. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE IN THE CASE WITH YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO RE-EXAMINE YOUR OWN VIEWS, AND CHANGE YOUR OPINION, IF CONVINCED IT IS ERRONEOUS. BUT DO NOT SURRENDER YOUR HONEST CONVICTION AS TO THE WEIGHT OR EFFECT OF THE EVIDENCE, SOLELY BECAUSE OF THE OPINION OF YOUR FELLOW JURORS, OR FOR THE MERE PURPOSE OF RETURNING A VERDICT.

REMEMBER AT ALL TIMES YOU ARE NOT PARTISANS. YOU ARE JUDGES -- JUDGES OF THE FACTS. YOUR SOLE INTEREST IS

TO SEEK THE TRUTH FROM THE EVIDENCE IN THE CASE.

UPON RETIRING TO THE JURY ROOM YOU SHOULD FIRST SELECT ONE OF YOUR NUMBER TO ACT AS YOUR FOREPERSON WHO WILL PRESIDE OVER YOUR DELIBERATIONS AND WILL BE YOUR SPOKESPERSON HERE IN COURT. YOU CAN MAKE THIS SELECTION AND CONDUCT YOUR DELIBERATIONS IN WHATEVER MANNER YOU THINK BEST, BUT I OFFER SOME SUGGESTIONS THAT OTHER JURIES HAVE FOUND HELPFUL TO ALLOW FULL PARTICIPATION BY ALL JURORS AND TO ARRIVE AT A VERDICT THAT SATISFIES EVERYONE.

THE FOREPERSON SHOULD ENCOURAGE OPEN COMMUNICATION, COOPERATION AND PARTICIPATION BY ALL JURORS, AND BE WILLING AND ABLE TO FACILITATE DISCUSSIONS WHEN DISAGREEMENTS AND DISPUTES ARISE.

THE FOREPERSON SHOULD LET EACH OF YOU SPEAK AND BE HEARD BEFORE EXPRESSING HER OR HIS VIEWS.

THE FOREPERSON SHOULD NEVER ATTEMPT TO PROMOTE OR PERMIT ANYONE ELSE TO PROMOTE HIS OR HER PERSONAL OPINIONS BY COERCION OR BULLYING.

THE FOREPERSON SHOULD MAKE SURE THAT  
DELIBERATIONS ARE NOT RUSHED.  
  
SOME PEOPLE ARE BETTER AT FACILITATING THAN OTHERS,  
AND IF IT BECOMES CLEAR THAT SOMEONE ELSE WOULD BE A  
MORE EFFECTIVE FOREPERSON, YOU MIGHT WANT TO CONSIDER  
SELECTING A DIFFERENT PERSON, WITH NO HARD FEELINGS.

YOU ALSO MAY THINK IT WISE TO SELECT A SECRETARY TO  
RECORD VOTES, WHICH SHOULD PROBABLY BE CAST BY SECRET  
BALLOT, AND TO KEEP TRACK OF WHETHER EVERYONE HAS  
SPOKEN.

SOME JURIES THINK IT WILL BE USEFUL TO TAKE A  
PRELIMINARY VOTE BEFORE DISCUSSIONS ARE STARTED, BUT  
THAT HAS NOT BEEN THE EXPERIENCE AROUND HERE. SUCH AN  
EARLY VOTE OFTEN PROVES COUNTER-PRODUCTIVE FOR  
SEVERAL REASONS, INCLUDING THAT IT TENDS TO “LOCK-IN” A  
PARTICULAR POINT OF VIEW BEFORE ALTERNATIVE POINTS OF  
VIEW ARE COVERED.

YOU SHOULD LISTEN CAREFULLY AND ATTENTIVELY TO EACH  
OTHER, AND HEAR WHAT EACH OTHER PERSON IS SAYING

BEFORE RESPONDING. DON'T INTERRUPT AND DON'T MONOPOLIZE THE DISCUSSION. SPEAK ONE AT A TIME. BE PATIENT AND RESPECTFUL OF OTHER OPINIONS, AND DON'T TAKE IT PERSONALLY IF SOMEONE DISAGREES WITH YOU.

A VERDICT FORM HAS BEEN PREPARED FOR YOU, AND YOU HAVE REVIEWED A COPY. YOU WILL TAKE THE ORIGINAL VERDICT FORM TO THE JURY ROOM AND WHEN YOU HAVE REACHED A UNANIMOUS AGREEMENT AS TO YOUR VERDICT, YOU WILL EACH SIGN IT, HAVE YOUR FOREPERSON DATE IT, AND THEN SIGNAL THE BAILIFF THAT YOU ARE PREPARED TO RETURN TO THE COURTROOM.

YOU WILL ALSO BE PROVIDED WITH COPIES OF THESE INSTRUCTIONS FOR YOUR USE DURING DELIBERATIONS.

IF, DURING YOUR DELIBERATIONS, YOU SHOULD DESIRE TO COMMUNICATE WITH THE COURT, PLEASE REDUCE YOUR MESSAGE OR QUESTION TO WRITING SIGNED BY THE FOREPERSON, AND PASS THE NOTE TO THE BAILIFF WHO WILL BRING IT TO MY ATTENTION. AFTER CONSULTING WITH THE LAWYERS, I WILL THEN RESPOND AS PROMPTLY AS POSSIBLE,

EITHER IN WRITING OR BY HAVING YOU RETURNED TO THE COURTROOM SO THAT I CAN ADDRESS YOU ORALLY. I CAUTION YOU, HOWEVER, WITH REGARD TO ANY MESSAGE OR QUESTION YOU MIGHT SEND, THAT YOU SHOULD NEVER STATE OR SPECIFY YOUR NUMERICAL DIVISION AT THE TIME.

IT IS PROPER TO ADD THE CAUTION THAT NOTHING SAID IN THESE INSTRUCTIONS AND NOTHING IN ANY FORM OF VERDICT PREPARED FOR YOUR CONVENIENCE IS MEANT TO SUGGEST OR HINT IN ANY WAY WHAT VERDICT I THINK YOU SHOULD FIND. WHAT THE VERDICT SHALL BE IS YOUR SOLE AND EXCLUSIVE DUTY AND RESPONSIBILITY.

YOU WILL NOTE FROM THE OATH ABOUT TO BE TAKEN BY THE BAILIFF THAT HE TOO, AS WELL AS ALL OTHER PERSONS, ARE FORBIDDEN TO COMMUNICATE IN ANY WAY OR MANNER WITH ANY MEMBER OF THE JURY ON ANY SUBJECT TOUCHING THE MERITS OF THE CASE.

[SWEAR BAILIFF AND SEND JURY OUT].